

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

MFA.No. 1346 of 2000(C)

OPMV.185/1993 of MOTOR ACCIDENT CLAIMS TRIBUNAL,
WAYANAD, KALPETTA)
.....

APPELLANT: 3RD RESPONDENT:

UNITED INDIA INSURANCE COMPANY LIMITED.,
BRANCH OFFICE, KALPETTA NOW REPRESENTED
BY ITS ASSISTANT MANAGER,MOTOR THIRD PARTY
CLAIMS OFFICE, IVTH FLOOR, VETTUKATTIL
BUILDINGS, KOCHI – 682 016.

BY ADV. SRI.P.MURALEEDHARAN

RESPONDENTS: CLAIMANTS:RESPONDENT NO.1 & 2:

1. C.I.ABRAHAM, AGED 30 YEARS,
S/O.ISSAC, CHOORAKKAPARAYIL, MANJOORA,
THARIYODE, THARIYODE AMSOM DESOM OF VYTHIRY TALUK.
2. E.P.VELAYUDHAN, S/O.K..K.RAVUNNY,
POZHUVANCHERRY HOUSE, ANCHUKUNNU P.O.,
MANANTHAVADY AMSOM, MANANTHAVADY TALUK.
3. M.IYPE, AGED NOT KNOWN,
S/O.MATHEW, MATHEKKAL HOUSE, P.O.MUNDAKKUTTY,
MANANTHAVADY TALUK, PADINHARATHARA AMSOM.

*ADDL.R4 TO R11 ARE IMPLEADED:

- R4. ANNAKKUTTY,
W/O.LATE M.IYPE, AGED 70 YEARS, RESIDING AT
MATHEKKAL HOUSE, P.O. MUNDAKKUTTY,
MANANTHAVADY TALUK, PADINHARATHARA AMSOM,
KALPETTA, WAYANAD DISTRICT.

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- R5. MANIKUNJU,
S/O.LATE M.IYPE, AGED 50 YEARS, RESIDING AT
MATHEKKAL HOUSE, P.O. MUNDAKKUTTY,
MANANTHAVADY TALUK, PADINHARATHARA AMSOM,
KALPETTA, WAYANAD DISTRICT.
- R6. MATHEW,
S/O.LATE M.IYPE, AGED 45 YEARS, RESIDING AT
MATHEKKAL HOUSE, P.O. MUNDAKKUTTY,
MANANTHAVADY TALUK, PADINHARATHARA AMSOM,
KALPETTA, WAYANAD DISTRICT.
- R7. JOHNSON,
S/O.LATE M.IYPE, AGED 40 YEARS, RESIDING AT
MATHEKKAL HOUSE, P.O. MUNDAKKUTTY,
MANANTHAVADY TALUK, PADINHARATHARA AMSOM,
KALPETTA, WAYANAD DISTRICT.
- R8. JOSE,
S/O.LATE M.IYPE, AGED 35 YEARS, RESIDING AT
MATHEKKAL HOUSE, P.O. MUNDAKKUTTY,
MANANTHAVADY TALUK, PADINHARATHARA AMSOM,
KALPETTA, WAYANAD DISTRICT.
- R9. JOJO,
S/O.LATE M.IYPE, AGED 30 YEARS, RESIDING AT
MATHEKKAL HOUSE, P.O. MUNDAKKUTTY,
MANANTHAVADY TALUK, PADINHARATHARA AMSOM,
KALPETTA, WAYANAD DISTRICT.
- R10. ELSY,
D/O.LATE M.IYPE, AGED 43 YEARS, RESIDING AT
MATHEKKAL HOUSE, P.O. MUNDAKKUTTY,
MANANTHAVADY TALUK, PADINHARATHARA AMSOM,
KALPETTA, WAYANAD DISTRICT.
- R11. PHILOMINA,
D/O.LATE M.IYPE, AGED 37 YEARS, RESIDING AT
MATHEKKAL HOUSE, P.O. MUNDAKKUTTY,
MANANTHAVADY TALUK, PADINHARATHARA AMSOM,
KALPETTA, WAYANAD DISTRICT.

(*ADDL.R4 TO R11 ARE IMPEADED AS PER ORDER DTD.
1/10/2007 IN I.A.NO.2315/2005)

BY ADV. SRI.RUBIN JOSEPH for R1

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 01/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

Kss

ORDER ON C.M.P.NO.8080/2000 IN M.F.A.NO.1346/2000

DISMISSED

1/10/2007

SD/- J.B.KOSHY, JUDGE

SD/- K.HEMA, JUDGE

/TRUE COPY/

P.A.TO JUDGE

KSS

J.B.KOSHY & K.HEMA, JJ.

M.F.A.No.1346 OF 2000

Dated 1st October, 2007

JUDGMENT

Koshy,J.

This appeal is filed by the insurance company against the award of the Motor Accidents Claims Tribunal, Kalpetta. First respondent/claimant was travelling in a tractor sitting on the mudguard. The tractor was used to bring bricks for his house construction. When the tractor overturned into a deep ditch, the claimant sustained injuries. Contention of the appellant is that travelling in the mudguard is prohibited. Therefore, the accident occurred only due to the negligence of the claimant. The tractor was covered by the insurance policy. On going through the policy also we are of the opinion that passengers cannot travel in the tractor as per the policy conditions. Even if he is covered, we are of the opinion that since the accident occurred due to the negligence of the claimant by travelling by sitting on the mudguard, the appellant is not liable to pay compensation. Hence, we allow the appeal and hold that the appellant insurance company is not liable to pay compensation as held by the Tribunal.

**J.B.KOSHY
JUDGE**

**K.HEMA
JUDGE**

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